

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

OREGON SEALARK, LLC,

Plaintiff,

v.

OLSON MARINE, INC.,

Defendant.

No. \_\_\_\_\_

COMPLAINT

Plaintiff Oregon Sealark, LLC (Oregon Sealark), by and through its attorneys Noah Jarrett, David Boyajian and Schwabe, Williamson & Wyatt, P.C., alleges as follows:

**JURISDICTION AND VENUE**

1. This is an admiralty and maritime claim within this Court's admiralty and maritime jurisdiction under 28 U.S.C. § 1333 and within the meaning of Fed. R. Civ. P. 9(h) as it involves claims for enforcement of a Bareboat Charter Party (attached hereto as Exhibit 1).

2. Venue is proper in this Court because the parties agreed, in the Bareboat Charter Party Amendment (attached hereto as Exhibit 2), as follows:

Oregon Sealark and Olson agree to waive the requirement for arbitration and instead have their disputes resolved by litigation in the United States District Court for the Western District of Washington. The Charter is deemed amended accordingly. Each party submits to the jurisdiction of

1 the United States District Court for the Western  
2 District of Washington and agrees that any trial will  
3 be before a judge of that Court and not a jury.

4 **PARTIES**

5 3. Oregon Sealark, LLC is a limited liability company organized under the laws  
6 of the State of Oregon. Oregon Sealark owns vessels, including barges. Oregon Sealark  
7 owns the barge BRUSCO 401.

8 4. Olson Marine, Inc. (Olson Marine) is a corporation organized under the laws  
9 of the State of Alaska. At all times material hereto, Olson Marine engaged in business for  
10 profit, including marine towing.

11 **BARGE**

12 5. The barge BRUSCO 401 is a flat-deck ocean barge measuring 400 feet x 76  
13 feet. BRUSCO 401 has historically been operated in ocean towing service and, therefore,  
14 carries a load line established through the American Bureau of Shipping (ABS) with a Load  
15 Line Certificate.

16 6. Olson Marine bareboat chartered the BRUSCO 401 from Oregon Sealark by  
17 Charter Party executed October 12, 2018. Ex. 1.

18 **BAREBOAT CHARTER PARTY**

19 7. The Bareboat Charter Party, as amended, includes all terms of the parties'  
20 agreements with respect to BRUSCO 401.

21 8. The Load Line certification for BRUSCO 401 was essential to the ocean-  
22 going service of the barge in which Olson Marine intended to employ it. Accordingly, the  
23 Charter Party required Oregon Sealark to perform the shipyard work necessary to renew the  
24 Load Line Certificate prior to Olson Marine taking delivery of the BRUSCO 401 under the  
25 Charter Party. Olson Marine was required by the Charter Party to renew the Load Line  
26 Certificate at the end of the charter term.

9. Oregon Sealark and Olson Marine agreed that Bill Kelley would conduct an on-hire survey prior to commencement of the charter. Ex. 1, ¶ 1.b.

10. The parties agreed that the BRUSCO 401 would be delivered to Olson Marine on January 1, 2019. The charter would run for a five-year term to end on December 31, 2024 and that Olson Marine would pay hire at the rate of \$1,800 per day. Ex. 1, ¶ 3.

11. Oregon Sealark installed a bin wall required by Olson Marine and conducted repairs necessary to satisfy the ABS surveyors, all at Oregon Sealark's sole expense. The ABS Load Line Certificate was issued January 14, 2019 and was valid until January 14, 2024.

12. Having completed its pre-charter obligations, as promised under the Charter Party, Oregon Sealark delivered BRUSCO 401 to Olson Marine in January 2019 and Olson Marine accepted delivery.

## CONDUCT OF CHARTER

13. After delivery, Oregon Sealark collected charter hire on a periodic basis. Charter hire was frequently paid late.

14. Consistent with the terms of the Charter Party, Olson Marine maintained exclusive control of BRUSCO 401.

15. The Charter Party required Olson Marine to drydock BRUSCO 401 at Olson Marine's sole expense at least once every 30 months, at which drydocking Olson agreed to perform the following work:

- clean and paint the Barge and its underwater parts;
- overcoat the bottom of the barge with antifouling paint;
- inspect and, if necessary, recoat the interior of all tanks in order to maintain their condition as of the commencement of the charter; and,

- replace the protective zincs. Ex. 1, ¶ 10.

16. Olson Marine failed to drydock the BRUSCO 401 as required by the Charter Party and failed to perform any of the interim maintenance, inspection or painting required by the Charter Party. Oregon Sealark did not waive the requirement of this interim maintenance work and Olson Marine's failure is not otherwise excused.

### **EARLY TERMINATION**

17. In early 2023, Olson Marine requested that the parties terminate the charter early. Oregon Sealark arranged alternative service for BRUSCO 401 and agreed to allow Olson Marine to redeliver BRUSCO 401 early.

18. Oregon Sealark did not waive any other requirements of the Charter Party.

19. Olson Marine, as charterer, agreed to redeliver the BRUSCO 401, upon expiry of the charter, in "as good condition as when delivered, ordinary wear and tear excepted, with all class, Coast Guard and trading certificates valid and renewed immediately prior to the redelivery all at Charterer's expense." Ex. 1, ¶ 8.

20. Oregon Sealark encouraged Olson Marine to return BRUSCO 401 to Portland, Oregon for drydocking and renewal of its Load Line Certificate, which renewal was required by the Charter Party. Ex. 1, ¶ 8a.

21. Notwithstanding this encouragement from Oregon Sealark, Olson Marine chose to drydock BRUSCO 401 at Lind Marine's shipyard in Vallejo, California and to consult with the regional ABS certification office responsible for that location. Oregon Sealark had no ability to reroute BRUSCO 401 to Portland for drydocking and Load Line renewal—Olson Marine retained control of BRUSCO 401 per the Charter Party.

22. Between January 26, 2023 and March 31, 2023, ABS's surveyors extensively examined BRUSCO 401. Those ABS surveyors identified various repairs they would require



1 to renew BRUSCO 401's Load Line Certificate. Per the Charter Party, Olson Marine agreed  
2 to perform the repairs required by the ABS surveyors.

3 23. Olson Marine also conducted the off-hire survey required by the Charter  
4 Party. The off-hire surveyor, Capt. Steven J Bahnsen, identified numerous items of damage  
5 to the barge that did not exist at the time of on-hire survey. By the terms of the Charter Party,  
6 Olson Marine was required to repair damage called out in the off-hire survey, save ordinary  
7 wear and tear.

8 24. Thereafter, Olson Marine authorized Lind Marine to conduct repairs called  
9 out by the off-hire surveyor and by ABS.

10 25. After significant repairs were conducted and still more had been initiated, and  
11 while the Barge was in drydock at Lind Marine, Olson Marine repudiated its obligations  
12 under the Charter Party and refused to pay the shipyard to complete the repairs called out by  
13 the ABS and off-hire surveyors. Those ABS surveyors refused to renew BRUSCO 401's  
14 Load Line Certificate until the identified repairs were completed.

15 26. Lind Marine refused to finish repairs to make BRUSCO 401 seaworthy  
16 without satisfactory assurances Lind Marine would be paid. Oregon Sealark was forced to  
17 guarantee payment to Lind Marine in exchange for Olson Marine's rights under the Repair  
18 Contract with Lind Marine. Oregon Sealark accepted the assignment of Olson Marine's  
19 contract with Lind Marine without prejudice to Oregon Sealark's rights and without waiver  
20 of any claim against Olson Marine.

21 27. Olson Marine effectively abandoned BRUSCO 401 at Lind Marine as it sat in  
22 Lind Marine's drydock and Olson Marine thereby refused to redeliver BRUSCO 401 as  
23 required in the Charter Party.

24 28. Olson Marine discontinued paying charter hire as of March 31, 2023.  
25  
26

**SHIPYARD CHARGES**

29. Since Olson Marine requested early termination of the charter and towed BRUSCO 401 to Lind Marine, Oregon Sealark chartered BRUSCO 401 to unrelated company Young Brothers for service commencing April 3, 2023.

30. In an effort to mitigate the damages caused by Olson Marine's breach of the Charter Party, Oregon Sealark negotiated down the repair scope required by the ABS surveyors and ultimately paid all remaining charges levied by Lind Marine in order to secure possession of BRUSCO 401 and allow Oregon Sealark to charter BRUSCO 401 to Young Brothers for alternative service.

31. Those repairs necessitated services by other vendors to monitor the work, provide necessary design services, and conduct necessary surveys.

32. Those charges, properly for the account of Olson Marine, were paid by or on behalf of Oregon Sealark.

33. In breach of the Charter Party, Olson Marine failed and refused to make full payment to Lind Marine and other vendors, exposing the Barge to potential claims of maritime lien. Oregon Sealark paid \$1,751,495.59 to Lind Marine and paid other expenses in the amount of \$66,846.96, all of which payments were necessary to renew the Load Line Certificate of BRUSCO 401 and return the Barge to the condition reported in the on hire survey. All of these expenses were properly Olson Marine's responsibility under the Charter Party.

34. Despite demand, Olson Marine failed and refused to accept responsibility for the repairs and load line renewal referenced above. Similarly, despite timely demand, Olson Marine failed and refused to reimburse Oregon Sealark for these expenses after Oregon Sealark was compelled to pay to complete the repairs initiated by Olson Marine.

1           35. Olson Marine's failure to conduct repairs to BRUSCO 401 for damages  
2 caused by Olson Marine and failure to make repairs necessary to renew the Load Line  
3 Certificate of BRUSCO 401 constitute events of default under the Charter Party. Ex. 1, ¶ 15.

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5                           **CHARTER HIRE INTEREST**

6           36. Olson Marine paid charter hire late throughout the term of the charter without  
7 Oregon Sealark's authorization or any other excuse. The Charter Party provides that "Charter  
8 hire not paid when due shall bear interest at the rate of one and half percent (1 ½%) per  
9 month." By paying nearly every invoice for charter hire late, Olson Marine incurred interest  
10 charges of \$110,010.87.

11           37. Olson Marine's failure to pay charter hire and accumulated interest when due  
12 constitutes an event of default under the Charter Party. Ex. 1, ¶ 15.

13                           **PRAYER FOR RELIEF**

14           WHEREFORE, Plaintiff Oregon Sealark, LLC asks for judgment against Olson  
15 Marine, Inc. as follows:

16           (a) For actual damages caused by Olson Marine's breach of the Charter Party in  
17 an amount to be determined at trial;

18           (b) For statutory and/or contractual interest under the Charter on the judgment  
19 from the date judgment is entered until paid in full; and

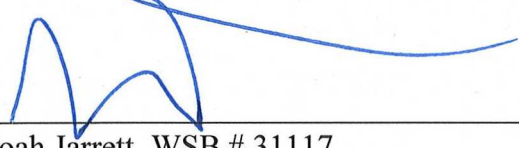
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1 (c) For such other amounts and relief as the Court deems just and equitable.

2 Dated this 14th day of September, 2023.

3 SCHWABE, WILLIAMSON & WYATT, P.C.

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